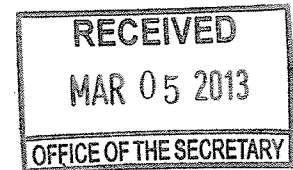


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UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 67793/September 6, 2012

ACCOUNTING AND AUDITING ENFORCEMENT  
Release No. 3415/ September 6, 2012

ADMINISTRATIVE PROCEEDING  
File No. 3-15012

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In the Matter of :  
:   
S.W. Hatfield, CPA and :  
Scott W. Hatfield, CPA, :  
:   
Respondents. :

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**RESPONSE IN OPPOSITION TO DIVISION OF ENFORCEMENT'S MOTION FOR  
SUMMARY DISPOSITION AND BRIEF IN SUPPORT**

Respondents S.W. Hatfield, CPA ("SWH") and Scott W. Hatfield, CPA ("Mr. Hatfield") (collectively, the "Respondents") file this Response in Opposition to the Motion for Summary Disposition and Brief in Support (the "Motion") filed by the Division of Enforcement of the United States Securities and Exchange Commission (the "Commission") as follows:

**I.  
INTRODUCTION AND SUMMARY OF ARGUMENT**

Respondents acknowledge that SWH's accounting license was under an administrative suspension from January 31, 2010 until May 19, 2011. Furthermore, Respondents admit to issuing 38 audit reports while SWH's license was under that suspension. However, Respondents disagree with the Commission's contention that they violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder and should be ordered to cease and desist therefrom and be permanently barred from appearing before the Commission.

In particular, Respondents lacked the ultimate authority required by the Supreme Court to impose liability under Section 10(b) and otherwise lacked the intent to deceive for liability under Section 10(b) and Rule 10b-5. Furthermore, as discussed below, contested mitigating factors support the Court's determination to impose less strict, if any, penalties on the Respondents, not the severe, death penalty sanctions requested by the Commission, including a permanent bar from appearing as an accountant before the Commission. Lastly, the Court should deny or limit the disgorgement, prejudgment interest, and civil penalties requested by the Commission as excessive and unwarranted under these facts.

## **II.**

### **SUMMARY DISPOSITION EVIDENCE**

In support of their Response in Opposition to the Commission's motion, Respondents rely upon the following evidence:

1. Exhibit 1: Declaration of John A. Koepke ("Koepke Declaration").
2. Respondents adopt and incorporate by reference the Declaration of David R. King ("King Declaration"), division staff accountant, attached to the Commission's Motion for Summary Disposition as Exhibit 2, and hereto as Exhibit 2.
3. Respondents adopt and incorporate by reference the Declaration of William Treacy ("Treacy Declaration"), executive director of the State Board (with exhibits), attached to the Commission's Motion for Summary Disposition as Exhibit 3 ("Treacy Declaration"), and hereto as Exhibit 3.

## **III.**

### **FACTUAL AND PROCEDURAL BACKGROUND**

It is undisputed that Mr. Hatfield has been a licensed certified public accountant since 1985. It is further undisputed that SWH is a public accounting firm in Dallas, Texas and has been licensed by the Texas State Board of Public Accountancy ("State Board") since 1994.

On October 29, 2007, the Public Company Accounting Oversight Board ("PCAOB") conducted a peer review of the Respondents for the period of May 1, 2006 to September 30, 2007 (the "2007 Inspection"). See Koepke Declaration at ¶ 4. As a result of the 2007 Inspection, an initial report of the peer review inspection (the "Inspection Report") was issued on November 21, 2008. See Koepke Declaration at ¶ 5. Certain issues were raised by the peer review inspection and, as a result, Mr. Hatfield engaged John A. Koepke ("Mr. Koepke") as counsel. See Koepke Declaration at ¶ 3.

On November 5, 2009, per the PCAOB rules and its request, Mr. Hatfield responded to the issues raised by the Inspection Report. See Koepke Declaration at ¶ 5. Further, Mr. Hatfield provided updates to the State Board regarding the status of the PCAOB peer review on October 28, 2009 and on March 9, 2010. See Koepke Declaration at ¶ 6.

During this period, the peer review of the PCAOB was held open, awaiting the final results of the 2007 Inspection. The State Board and Mr. Hatfield, through Mr. Koepke, contacted the PCAOB several times to determine the status of, and ultimate disposition of, the 2007 Report, without any success. See Koepke Declaration at ¶ 8. In short, Mr. Hatfield did all that he could do to obtain a final report for the 2007 peer review inspection by the PCAOB. See Koepke Declaration at ¶ 15.

On July 8, 2010, the State Board closed its file for SWH because of the lack of response from the PCAOB in issuing a final report, citing "Expired due to failure to complete a peer review." This action by the State Board resulted in the administrative revocation of SWH's accounting license. Therefore, due to the PCAOB not timely issuing its 2007 Report until well after the State Board closed its file, and due to no fault of Respondents, SWH's license was revoked. See Koepke Declaration at ¶ 15.

At the conclusion of the PCAOB's peer review (and after the State Board revoked SWH's license because of that peer review), the State Board and PCAOB concluded that SWH did not, in fact, perform work for non-issuer clients. Treacy Declaration at ¶ 13. As a result of this finding, SWH was not even eligible for or subject to the peer review by the PCAOB that delayed the renewal of its license. See, generally, Treacy Declaration at ¶ 13 and Exhibit B thereto ("If you...believe Hatfield's story that he has no 'non-issuers,' he will never get or need a peer review...If that is the case, he is exempt from peer review.").

Mr. Hatfield's "story," of course, proved to be true. Consequently, according to Mr. Treacy, the executive director of the State Board, the board ultimately permitted SWH to renew its accounting license after simply paying its yearly fee:

On May 25, 2011, the [State Board] permitted SWH to obtain a firm license after the firm paid the required fee and after determining that the PCAOB had not, at that time, issued final sanctions against SWH *and that SWH did not service non-issuer clients requiring the firm to submit to peer review.*

Treacy Declaration at ¶ 13 (emphasis added). As a result, SWH's accounting license expired because it was subjected to an inexcusably prolonged peer review process by the PCAOB that did not apply to the firm in the first place.

The Commission instituted the instant proceeding against the Respondents on September 6, 2012.

#### IV.

#### **STANDARD FOR SUMMARY DISPOSITION**

Rule 250(a) of the Commission's Rules of Practice provides that, after a respondent's answer has been filed and documents have been made available to that respondent for inspection and copying, a party may make a motion for summary disposition of any or all allegations of the Order Instituting Proceedings ("OIP") with respect to that respondent. 17 C.F.R. § 201.250(a).

The facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested declarations, or by facts officially noted pursuant to Rule 323 of the Commission's Rules of Practice.

Rule 250(b) of the Commission's Rules of Practice requires the hearing officer to promptly grant or deny the motion or to defer decision on the motion. 17 C.F.R. § 201.250(b). The hearing officer may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law.

In assessing the summary disposition record, the facts, as well as the reasonable inferences that may be drawn from them, must be viewed in the light most favorable to the nonmoving party. *See Felix v. N.Y. City Transit Auth.*, 324 F.3d 102, 104 (2d Cir. 2003); *O'Shea v. Yellow Tech. Svcs., Inc.*, 185 F.3d 1093, 1096 (10th Cir. 1999); *Cooperman v. Individual, Inc.*, 171 F.3d 43, 46 (1st Cir. 1999). At the summary disposition stage, the hearing officer's function is not to weigh the evidence and determine the truth of the matter, but rather to determine whether there is a genuine issue for resolution at a hearing. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

## V. ARGUMENT

### A. Respondents lacked the ultimate authority to make statements required to impose liability under Section 10(b).

The Supreme Court's recent decision in *Janus Capital Group, Inc. v. First Derivative Traders* held that an investment adviser to a mutual fund could not be held primarily liable under Section 10(b) for statements made in the fund's prospectus. The Court's reasoning in excluding the adviser's liability was based on the fact that the adviser did not have "ultimate authority"

over the making of the allegedly fraudulent statements. *Janus Capital Group, Inc. v. First Derivatives Traders*, 131 S. Ct. 2296, 2302 (2011). The reasoning of the Court was straightforward: there was no primary liability under Section 10(b) and Rule 10b-5 except for those who have ultimate authority or control over the content and dissemination of a statement. *Id.*

The Court held that to “make a statement” for purposes of liability under Section 10(b), the person or entity must have the ultimate authority over the statement. In other words, in order to “make” a statement, a person must actually control the very making of the statement. *Id.* at 2304. Importantly, the Court noted that although the adviser maintained substantial control over the entity that actually made the statement in question, the maker was a separate legal entity that, *inter alia*, observed corporate formalities and maintained its own board of directors. *Id.* at 2299. Consequently, liability could not arise simply because the alleged primary violator was “significantly involved” in preparing the statement or “assisted” the entity with ultimate control over the crafting of the statement. *Id.* at 2305.

The Court analogized that the maker of a statement is not the speechwriter, but the speaker:

Even when a speechwriter drafts a speech, the content is entirely within the control of the person who delivers it. It is the speaker who takes credit—or blame—for what is ultimately said.

*Id.* at 2302.

Consequently, even though the adviser may have been involved in preparing the prospectuses that contained the statements, it did not “make” the statements, as no statements were directly attributable to it. Instead, it was Janus Investment Funds – the securities issuer – that had the ultimate control over the content. *Id.* at 2312, n. 11.

Similarly, the Respondents in this case did not have the ultimate authority to make the allegedly material misstatements or omissions relied on by the Commission in support of its claims that they willfully violated Section 10(b) and Rule 10b-5. Instead, the ultimate authority for making of the statements in question rested exclusively with the makers themselves, *i.e.*, the respective issuers responsible for and that made the SEC filings. *See, e.g., SEC v. Das*, 2011 U.S. Dist. LEXIS 106982, at \*18 (D. Ne. Sept. 20, 2011) (chief executive officers and chief financial officers who signed and certified Forms 10-K and 10-Q were “makers” of statements); *SEC v. Carter*, 2011 U.S. Dist. LEXIS 136599 (N.D. Ill. Nov. 28, 2011) (corporate attorney and director who wrote releases at defendant’s request would not be liable under *Janus* as “makers” of the statements).

Like the investment adviser in *Janus* and the attorney and director in *Carter*, the Respondents clearly were participants in preparing the statements included in their issuer clients’ filings. Indeed, they played an important role in preparing the audit reports that were contained in those statements. It is equally clear, however, that the Respondents did not *make* the statements. Under *Janus*, because they did not have “ultimate authority” over the statements, the Respondents were not the makers of those statements for purposes of Section 10(b) and Rule 10b-5. Consequently, *Janus* precludes the Respondents’ liability under the Commission’s antifraud provisions of the Exchange Act.

**B. There is no evidence that Respondent’s alleged misstatements or omissions were material.**

As the Court is aware, the Commission is required to prove that the alleged misstatements or omissions by the Respondents were material to a reasonable investor. For a statement to be material, the Commission must show that there is a substantial likelihood that the information would be important to a reasonable investor in making their investment decision and

that, if known, it would have significantly altered the total mix of information available in making that decision. *Basic v. Levinson*, 485 U.S. 224, 231-32 (1988); *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

Materiality is a fact issue. *See, e.g., Fecht v. Price Co.*, 70 F.3d 1078, 1081-82 (9th Cir. 1995) (whether the inclusion of cautionary language is sufficient to ascertain whether or not a statement in a public document was misleading is a fact issue); *see also* 9th Cir. MODEL CIVIL JURY INSTR. 18.2 Securities—Misrepresentations or Omissions—Materiality (“[the jury] must decide whether something was material based on the circumstances as they existed at the time of the statement or omission”). Accordingly, applying the materiality standard set forth in *Basic* and related cases, it is a fact issue whether a reasonable investor would want to know the omitted or misleading information before making their investment decision.

The best and most probative evidence of materiality would be what an investor actually said regarding the importance of the supposedly false or omitted information in question. Here, however, the Commission offers no proof on this critical fact issue in support of its motion for pre-trial disposition. Instead, it makes the conclusory argument that the “decision to issue audit reports when SWH was not permitted to do so, or even to hold itself out as a CPA firm, and to omit disclosing that information to issuer clients or the public, cannot reasonably be disputed.” Motion at 13. No evidence is offered that a reasonable investor would consider the administrative revocation of SWH’s accounting license – for, as described above, an ultimately inapplicable reason – to be important in making their investment decision.

As an initial point, any supposed non-disclosure to “issuer clients” cannot establish materiality under the *Basic* test. *See Basic*, 485 U.S. at 231-32 (the information must be important to an *investor* in making their investment decision). Accordingly, whether or not the

administrative license revocation of SWH was disclosed to any of the Respondents' issuer clients is not relevant to the Court's materiality analysis.

Further, whether the claimed misstatements and/or omissions by the Respondents meet the materiality threshold of Section 10(b) is a disputed fact issue precluding summary disposition. As described by Mr. Koepke, beginning in October 2007 the Public Company Accounting Oversight Board ("PCAOB") conducted a protracted peer review of SWH that remained open until October 2010, when it issued final comments on the peer review it began three years earlier. *See* Koepke Declaration at ¶¶ 4, 7 and 13. As a direct consequence of this remarkable delay by the PCAOB in completing its work, the State Board closed its file on SWH on July 8, 2010, resulting in the administrative and retroactive revocation of SWH's state accounting license. *Id.* at ¶¶ 9 and 10.

The Respondents were unable to renew SWH's accounting license with the State Board due to the pendency of the PCAOB's peer review, not because of any misconduct by or findings against them. *Id.* at ¶ 11. Consequently, due to the technical and administrative nature of SWH's temporary license revocation, it is unreasonable and factually unsupported to assume the materiality of this revocation's non-disclosure to investors in the issuer companies.

In further support of the Respondents' contention that materiality cannot be presumed here, it is important to emphasize the inapplicability of the very PCAOB peer review process that led to SWH's license revocation. The PCAOB's three-year review achieved nothing of substance, other than to delay SWH's permission to pay its required renewal fee to the State Board and to cause its license to lapse as a direct consequence of that delay. As noted above, the State Board and PCAOB finally concluded that SWH did not, in fact, perform work for non-issuer clients. *See* Treacy Declaration at ¶ 13 (with attachments). This finding (which Messrs. Hatfield and Koepke had consistently argued to the State Board) meant that the Respondents

were not subject to peer review by the PCAOB in the first place. Koepke Declaration at ¶¶ 6 and 8.

Consequently, SWH's accounting license renewal, which was delayed because of the PCAOB's delinquent peer review, never should have been delayed at all *because the firm was exempt from that peer review*. See Treacy Declaration at ¶ 13. ("On May 25, 2011, the [State Board] permitted SWH to obtain a firm license after the firm paid the required fee and after determining that...SWH did not service non-issuer clients requiring the firm to submit to peer review.".)<sup>1</sup> In other words, SWH's accounting license expired because it was subjected to a prolonged review process that did not even apply to it.

Under these facts, materiality simply cannot be presumed. The Commission's motion therefore should be denied because of this contested and unproven fact issue.

**C. The Respondents lacked the intent to deceive required for liability under Section 10(b) and Rule 10b-5.**

As correctly set forth in the Commission's motion, the staff may prove that the Respondents had the specific intent to deceive to be held liable under Section 10(b) and Rule 10b-5. The Supreme Court has defined the level of required intent as "a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). Similarly, the intent requirement may be satisfied by the lesser but still onerous showing of recklessness, or "a highly unreasonable omission, involving not merely simple, or even inexcusable negligence, *but an extreme departure from the standards of ordinary care*, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." *Sundstrand Corp. v. Sun Chemical Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977) (emphasis added).

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<sup>1</sup> The PCAOB did not issue or recommend any final sanctions against the Respondents. See Treacy Declaration at ¶ 13.

First, there is no evidence that the Respondents acted willfully, that is, with the specific intent to deceive investors or potential investors. Instead, as set forth above, the Respondents Prepared audit reports included in certain filings made by issuers during a time when, through no fault of its own, SWH's accounting license had lapsed due to a severely delinquent and unnecessary peer review by the PCACB. The evidence further demonstrates that the Respondents were not notified of the administrative lapse of SWH's license until well after it had participated in the issuing of multiple reports on behalf of those issuers. Koepke Declaration at ¶ 12. There simply is no evidence that the Respondents possessed the specific intent to defraud anyone.

Second, the evidence fails to show that the Respondents acted recklessly. As described above and in the attached, the Respondents, directly and through competent and experienced counsel, repeatedly and timely petitioned the PCAOB to complete its peer review of SWH. Koepke Declaration at ¶¶ 6 and 8. The PCAOB issued its preliminary report in November 2008, to which the Respondents responded as required. Thereafter, Mr. Hatfield and counsel consistently provided updates to the State Board regarding the status of the PCAOB's ongoing and open peer review. *Id.* Further, the Respondents and the State Board contacted the PCAOB numerous times in attempts to determine the status, and ultimate disposition, of the 2007 Inspection of Mr. Hatfield. *Id.* These efforts are undisputed.

Despite the Respondents' and State Board's consistent attempts to compel completion of the PCAOB's peer review, the State Board eventually tired of the process and closed its file on SWH as a result of the PCAOB's failure to issue a final peer review report. This closure by the State Board, which, as discussed above, resulted in the administrative revocation of SWH's accounting license, occurred entirely because of the delinquency of the PCAOB in issuing a final peer review report; it was in no way the fault or responsibility of the Respondents. Koepke

Declaration at ¶¶ 10, 11 and 15. Further, the failure of the PCAOB to complete SWH's peer review prevented the firm from renewing its accounting license. *Id.* at ¶¶ 11 and 15. Far from acting willfully or recklessly, the Respondents were caught between the wheels of a remarkably derelict PCAOB in performing its job – which was ultimately found not even to apply to SWH – and a frustrated State Board that eventually tired of the long wait for the PCAOB to do that job.

Further, recklessness requires that the allegedly fraudulent material omission or misstatement “derive from something more egregious than even ‘white heart/empty head’ good faith.” *Sundstrand*, 553 F.2d at 1045. The court elaborated on this intent requirement, holding that if the defendant:

“...genuinely forgot to disclose information or [the information] never came to his mind,” then he was not reckless in failing to disclose the information, even if the “proverbial ‘reasonable man’ would never have forgotten.”

*Id.* at 1045 n.20.

The Respondents' actions are consistent with the conduct found in *Sundstrand* to fall short of recklessness. They attempted to rectify the problem with the PCAOB by consistently requesting completion of the pending peer review. Koepke Declaration at ¶¶ 6, 8, 9 and 15. The PCAOB failed to timely do so. They consistently updated the State Board regarding the status of the PCAOB's peer review process. *Id.* at ¶ 6. They learned after the fact of the administrative license suspension. *Id.* at ¶ 12. This course of action simply does not support the finding of “something more egregious than even ‘white heart/empty head’ good faith” or the “highly unreasonable...extreme departure from the standards of ordinary care” that is necessary to prove recklessness.

This Court, in assessing a respondent's intent, must “look at an actor's actual state of mind at the time of the relevant conduct.” *Alvin W. Gebhart, Jr. and Donna T. Gebhart*, SEC

Admin. Proc. File No. 3-11953r (Nov. 14, 2008). The evidence here shows that the Respondents acted in good faith, even if they participated in the cited SEC filings during the administrative suspension of SWH's accounting license. Accordingly, there is no evidence that the Respondents possessed the necessary intent to violate Section 10(b) or Rule 10b-5. The Commission's motion should therefore be denied.

**D. The majority of the alleged misstatements or omissions by the Respondents were not made in connection with the purchase or sale of a security.**

To be liable under Section 10(b) and Rule 10b-5, the conduct in question must be made in connection with the purchase or sale of a security. 15 U.S.C. § 78j and 17 C.F.R. § 240.10b-5. Here, the Commission's motion describes 21 issuers for which the Respondents were purported to have issued 38 audit reports while SWH's license was under administrative revocation. *See, e.g.,* Motion at 8 – 10 ("SWH issued 38 audit reports for 21 issuers while its license was expired."). These audit reports are the misstatements or omissions exclusively relied upon by the Commission. *See, e.g.,* Motion at 6 ("...between January 31, 2010 and May 19, 2011, Respondents knowingly issued audit reports for multiple issuers during this time, despite their awareness that doing so violated the law.").

This description of 38 reports for 21 issuers, however, vastly overstates the number of misstatements or omissions that the Respondents even arguably could have made that, as required under Section 10(b), were made in connection with the purchase or sale of a security. Specifically, only six of the issuers for which SWH issued audit reports traded or issued securities during the time period in question. *See* King Declaration at ¶¶ 15 and 16, attached to the Commission's motion and incorporated herein by reference as Exhibit 3; *see also* Motion at 15. Consequently, the Respondents' claimed material misstatements could have been made, at most, in connection with the purchase or sale of those issuers' securities. The other cited 15

issuers, and all audit reports rendered for them, are not relevant to the Court's analysis because they did not offer securities for purchase or sale in connection with which the Respondents could have made the necessary false statements.

**E. The Court should take into account mitigating factors in determining whether the Respondents should be permanently barred from appearing before the Commission and otherwise sanctioned.**

In determining whether genuine issues of material fact exist that preclude summary disposition, the Commission recognizes that, "a respondent may present genuine issues with respect to facts that could mitigate his...misconduct." *John S. Brownson*, SEC Release No. 46,161, 77 SEC Docket 3097, 2002 WL 1438186, at \*4 n.12 (2002), *aff'd*, *Brownson v. SEC*, 66 Fed. Appx. 687 (9th Cir. 2003). In doing so, the Commission considers a number of factors in determining appropriate sanctions. As described by the Fifth Circuit in *Steadman v. SEC*, such mitigating factors include:

'the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.'

603 F.2d 1126, 1140 (5th Cir. 1979) (*quoting SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)).

The *Steadman* court specifically noted that "[t]o say that past misconduct gives rise to an inference of future misconduct is not enough. What is required is a specific enumeration of the factors in [the respondent's] case that merit exclusion." *Steadman*, 603 F.2d at 1140.

Several genuine issues of material fact exist with respect to the above factors and, specifically, whether the sanctions the Commission seeks to impose on Respondents – including permanently barring them from appearing before the Commission – are appropriate or warranted.

It is the Commission's burden of proving by a preponderance of the evidence that the penalties are appropriate. *Id.* at 1139 (holding preponderance of the evidence is the proper burden of proof in all SEC enforcement actions, including debarment cases). In view of the evidence in mitigation, discussed below, the Commission has failed to show that no lesser sanction than a permanent bar would satisfy the public interest and is justified under these facts.

Specifically, the court in *Steadman* noted that "It would be a gross abuse of discretion to bar an investment adviser from the industry on the basis of isolated negligent violations." *Steadman*, 603 F.2d at 1141. Here, the uncontroverted evidence shows that while the Respondents' course of conduct in preparing the audit reports for the six issuers described above occurred over several months, the actual violations were basically an isolated incident related to a single event, *i.e.*, issuing audit reports while SWH was under the administrative suspension of the State Board.

Furthermore, there is no evidence that the Respondents' actions injured any investors. Similarly, there is no evidence that any of the issuers filed any complaints against the Respondents at any time or had any regulatory complaints filed against them. The Respondents' actions simply do not approach the level of egregiousness sufficient to justify the penalties requested by the Commission.

Furthermore, as outlined in detail above, the evidence establishes that through no fault of the Respondents, the accounting license of SWH was revoked. As the court in *Steadman* noted, "[t]he respondent's state of mind is highly relevant in determining the remedy to impose." *Steadman*, 603 F.2d at 1140. Respondents did not receive any notice of the State Board's revocation at the time it occurred. See Koepke Declaration at ¶ 12. Further, there is no evidence of deliberate deception or fraud by the Respondents and, specifically, by Mr. Hatfield.

Consequently, Respondents' mental state in permitting SWH's license to lapse and in issuing any relevant audit reports during that time was far less than intentional or the result of any willfulness on their part. The Respondents' actions are inconsistent with the requirement of willful or reckless behavior necessary to establish scienter. Similarly, there is no evidence of any disciplinary or enforcement history concerning Mr. Hatfield, who has been licensed as a CPA for approximately 28 years. The requested permanent bar, disgorgement and harsh civil penalty requested by the Commission, coupled with the damage to his reputation, would be far greater sanctions than necessary for future deterrence.

Further, even without the Commission's attempt to permanently remove him from public accounting, Mr. Hatfield is in all likelihood nearing the end of his professional accounting career. Mr. Hatfield has been engaged in the practice of public accounting for approximately 19 years. During that extended time, he has an unblemished professional record as an accountant to publicly-traded companies. During that long professional career, he lacks any prior disciplinary, enforcement or criminal history relating to his accounting practice, either before the Commission or otherwise.

Moreover, there is no evidence that the Respondents will permit SWH's license to expire or lapse in the future. A basic tenant for issuance of injunctive relief is that there is a reasonable and substantial likelihood of future violations by the respondent if the conduct in question is not enjoined. *See, e.g., Steadman*, 603 F.2d at 1140 (noting that past misconduct is not sufficient to predict, and consequently to enjoin, future conduct); *SEC v. Conaway*, 697 F. Supp. 2d 733, 746 (E.D. Mich. 2010) ("The test for whether an injunction should be issued is 'whether the SEC [has] shown a reasonable and substantial likelihood that [the defendant], if not enjoined, would violate the securities laws in the future.'"); *see also SEC v. Pardue*, 367 F. Supp. 2d 773, 776

(E.D. Pa. 2005) (concluding that because no reasonable likelihood of future violation, no injunction would be issued).

Here, there is no such evidence that future violations are likely, much less of a reasonable and substantial likelihood as required. Instead, all known evidence, including more than twenty-five years of accounting practice, proves the opposite. Mr. Hatfield's years of practice without any disciplinary history is the single and most probative predictor of the Respondents' future conduct.

**E. The Court should deny or limit any order imposing disgorgement and prejudgment interest.**

It is within the Court's sound discretion to deny or limit the disgorgement and prejudgment interest it may impose. "District courts have broad discretion not only in determining whether or not to order disgorgement but also in calculating the amount to be disgorged." *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1474-75 (2d Cir. 1996); *SEC v. Huffman*, 996 F.2d 800, 803 (5th Cir. 1993). The purpose of disgorgement is not only to address ill-gotten gains, but also to deter future violations of the law. *SEC v. Seghers*, 298 Fed. Appx. 319, 336 (5th Cir. 2008); *SEC v. Rind*, 991 F.2d 1486, 1493 (9th Cir. 1993). Courts have similar discretion in determining and assessing prejudgment interest. *Cyrak v. Lemon*, 919 F.2d 320, 326 n. 12 (5th Cir. 1990) ("[t]he standard for prejudgment interest...is one of fairness and its application rests within the district court's sound discretion.").

The facts demonstrate that the proposed disgorgement amount – \$187,222, representing all fees charged by the Respondents during the time period in question – is unnecessary to deter the Respondents from committing future violations of the securities laws. First, there is no evidence or even the allegation of fraud in connection with the Commission filings in question that would justify the disgorgement of all fees earned by the Respondents for the work they

performed. Further, there is no evidence that the Respondents failed to perform the audit and accounting services for which they were compensated or that they failed to provide any value to their issuer clients through that work. Therefore, because the requested disgorgement and prejudgment interest are not needed as deterrents and would be more severe of a sanction than necessary, it is inequitable to impose such a severe financial obligation on Mr. Hatfield.

Accordingly, the Respondents ask that the Court deny the requested disgorgement and prejudgment interest or, alternatively, reduce the amount to a level that more adequately balances the need for a deterrent against the Respondents' relative responsibility.

**F. A civil penalty is not appropriate in this case.**

The Commission also seeks a civil penalty that is wholly inappropriate and excessive under the facts of this case. It is within the Court's discretion to deny or limit a request for civil penalties. *SEC v. Sargent*, 329 F.3d 34, 42 (1<sup>st</sup> Cir. 2003) (holding that the district court acted within its discretion in refusing to assess civil penalties); *SEC v. Rockwall Energy of Texas, LLC*, CIV. A.H-09-4080, 2012 WL 360191, \*8 (S.D. Tex. Feb. 1, 2012) (denying the SEC's request to impose civil penalties); *SEC v. Snyder*, No. H-03-04658, 2006 WL 6508273, \*12 (S.D. Tex. Aug. 26, 2006) (denying the SEC's request for civil penalties because of "[t]he lack of egregiousness of the violations at issue, the isolated nature of Defendant's actions, the sincerity of Defendant's assurances against future violations, and his current and future financial condition weigh strongly against the imposition of civil penalties.").

Courts have considered a variety of factors when evaluating the appropriateness of civil penalties. Those factors include: (1) the defendant's level of scienter; (2) whether the defendant's conduct was isolated or recurrent; (3) whether the defendant failed to admit wrongdoing; (4) whether the defendant cooperated with authorities; (5) whether the defendant is employed in the securities industry; (6) the defendant's financial condition; (7) the egregiousness

of the conduct; and (8) whether the defendant's conduct created a substantial loss to others. *SEC v. AmeriFirst Funding, Inc.*, No. 3:07-CV-1188-D, 2008 WL 1959843, at \*7 (N.D. Tex. May 5, 2008)( using factors 1, 2, 6, 7 and 8); *SEC v. Gunn*, 3:08-CV-1013-G, 2010 WL 3359465, at \*9 (N.D. Tex. Aug. 25, 2010) (using factors 2, 5, 6, 7, and 8); *SEC v. Abellan*, 674 F. Supp. 2d 1213, 1222 (D. Wash. 2009) (using factors 1, 2, 3, 4, 7, and 8).

These factors weigh in favor against imposing the requested civil penalties. First, as outlined above, the Respondents lacked the required intent to violate Section 10(b); accordingly, their level of scienter does not warrant a civil penalty or, alternatively, the proposed penalty. Second, the conduct in question was limited to the submission of audit reports on behalf of the six issuers that traded or offered securities during SWH's administrative suspension, making it isolated (especially in view of Mr. Hatfield's long public accounting career). Third, the Respondents' conduct, at most, was not sufficiently egregious to justify the severe civil penalty sought by the Commission. Finally, there is no evidence that submission of the audit reports in question harmed anyone in any way, much less caused a substantial loss to any investors.

Accordingly, a civil penalty against Respondents is not warranted or supported by the summary disposition evidence, or, alternatively, any such penalty should be significantly less than that requested by the Commission.

**G. A Rule 102(e) suspension or debarment is unwarranted.**

The Commission also requests that the Court grant summary disposition on its claim that a Rule of Practice 102(e) debarment is appropriate against the Respondents. Motion at 22 – 24. Such a debarment is unwarranted under these facts.

Under Rule of Practice 102(e), the Commission may temporarily or permanently deny a person the right to practice before the Commission if, after notice and the opportunity for hearing, they are found:

1. Not to possess the requisite qualifications to represent others; or
2. To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or
3. To have willfully violated, or willfully aided and abetted the violation of, any provision of the Federal securities laws or the rules and regulations thereunder.

17 C.F.R. § 201.102(e)(1). As the Commission correctly cites, it is required to show that the person it seeks to bar or suspend under the rule is “incompetent to practice before the Commission.” Motion at 22.

The Commission has not made that showing. First, the Commission does not argue that the Respondents lack the character or integrity or have engaged in unethical behavior that warrants debarment under Rule 102(e)(1)(ii).

Second, the Commission has not shown that the Respondents’ conduct evidences a lack of “the requisite qualifications to represent others” before it. 17 C.F.R. § 201.102(e)(1)(i). As discussed at length above, the Respondents prepared a number of audit reports for issuer clients while SWH’s accounting license was under an administrative suspension with the State Board. The Respondents were not responsible for the suspension. Indeed, the suspension was caused by a delayed peer review report that ultimately was determined to be unnecessary and inapplicable to SWH.

Admittedly, the Respondents prepared the cited audit reports for the six issuers that traded publicly or issued securities during the relevant time period. However, they did so only for a limited number of issuers that made statements in connection with the purchase or sale of a security, as required for liability under Section 10(b) and Rule 10b-5. Furthermore, the suspension of SWH resulted from a delayed peer review by the PCAOB that was both (1) the direct cause for the suspension and (2) eventually found not to be applicable to SWH in the first

place. *See* Koepke Declaration at ¶¶ 9 – 10 and Treacy Declaration at ¶ 13. The Respondents' limited preparation of audit reports for a small number of issuers during an unwarranted license suspension does not amount to conduct showing a lack of the requisite qualifications to represent others before the Commission.

Third, the summary disposition evidence does not show that the Respondents willfully violated any provision of the federal securities laws or applicable rules. As discussed above, there is not sufficient evidence:

1. That the Respondents had the ultimate authority to make statements on behalf of their issuer clients, as required by the Supreme Court's *Janus* decision;
2. That the Respondents made misstatements or omissions in connection with the issuers' audit reports in question that were material;
3. That the Respondents possessed the necessary scienter of willfully or recklessly violating Section 10(b) and Rule 10b-5 through the filing by those issuers of the audit report; or
4. That the alleged misstatements or omissions were made in connection with the purchase or sale of a security.

Further, significant mitigating facts under *Steadman* are in dispute that prevent summary disposition of this case. Accordingly, a Rule 102(e) debarment or suspension is not justified against the Respondents.

Importantly, many of the cases relied on by the Commission in support of the argued bar involve respondents who, unlike the Respondents here, never held CPA licenses in the first place and filed false and misleading reports on behalf of securities issuers. *See* Motion at 23. Such egregious facts simply are not present here. Instead, the Respondents filed the relevant audit reports while under a suspension that was later determined to be unwarranted because SWH was not subject to peer review. *See* Koepke Declaration at ¶ 15 ("Unfortunately, Respondents were put in an untenable position because they could not timely renew the license with the State Board

because they did not have a final peer review report from the PCAOB, which was a requirement of the State Board license renewal process.”). As belatedly acknowledged by Mr. Treacy, the State Board’s executive director, the board “permitted SWH to obtain a firm license after the firm paid the required fee and after determining that the PCAOB had not, at that time, issued final sanctions against SWH and that SWH did not service non-issuer clients requiring the firm to submit to peer review.” *See* Treacy Declaration at ¶ 13.

Accordingly, the Respondents’ conduct does not amount to practicing before the Commission without ever having been licensed. Instead, the Respondents practiced before the Commission during a time-limited and ultimately unjustified administrative suspension. The Commission’s request for summary disposition of its claim for a Rule 102(e) bar therefore should be denied.

## **VI. CONCLUSION**

For the foregoing reasons, the Commission’s motion for summary disposition of this case should be denied.

Signed this 4th day of March 2013.

Respectfully submitted,

**BELL NUNNALLY & MARTIN LLP**

By: /s/ Jeff Ansley

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**ATTORNEYS FOR RESPONDENTS**

**S.W. HATFIELD, CPA and**

**SCOTT W. HATFIELD, CPA**

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 67793/September 6, 2012**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3415/ September 6, 2012**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15012**

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<b>In the Matter of</b>	:
	:
<b>S.W. Hatfield, CPA and</b>	:
<b>Scott W. Hatfield, CPA,</b>	:
	:
<b>Respondents.</b>	:

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**DECLARATION OF JOHN KOEPKE**

I, John A. Koepke, declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct and that I am competent to testify to the following matters:

1. My name is John A. Koepke. I am of legal age and of sound mind and have personal knowledge of the facts set forth in this Declaration. I am duly authorized to make this Declaration and am competent to testify to the matters contained in this Declaration. I swear that every statement made in this Declaration is made on my personal knowledge and is true and correct.

2. I am a licensed attorney and a partner in the law firm of Jackson Walker, LLP in Dallas, Texas. My practice focuses on representing, among others, a variety of businesses in employment, trade secret, intellectual property, and other types of labor law litigation, including Fortune 100 corporations and privately-held companies.



3. In approximately the summer of 2007, Scott A. Hatfield ("Mr. Hatfield") retained me to serve as counsel for Mr. Hatfield and S.W. Hatfield, CPA ("SWH") ("collectively, the "Respondents"). Specifically, the Respondents hired me to assist them in connection with, without limitation, circumstances surrounding a protracted peer review of SWH by the Public Company Accounting Oversight Board ("PCAOB"). At the time, SWH's practice consisted of audits of publicly held companies. Consequently, the periodic mandatory peer review of SWH was performed by the PCAOB.

4. On or about October 29, 2007, the PCAOB conducted a peer review of SWH for the period of May 1, 2006 to September 30, 2007 (the "2007 Inspection"). Following the 2007 Inspection, the PCAOB requested – and received – additional information from the Respondents in connection with its peer review of SWH.

5. The PCAOB issued a preliminary report ("Initial Report") regarding the 2007 Inspection on November 21, 2008. The PCAOB issued the Initial Report more than a year after the 2007 Inspection. Pursuant to PCAOB rules, SWH responded to the Initial Report on November 5, 2009, addressing the issues raised by the PCAOB in the Initial Report, and providing additional information.

6. As required, SWH provided updates to the Texas State Board of Public Accountancy ("State Board") regarding the status of the PCAOB's 2007 Inspection as it was an ongoing and open peer review of SWH. SWH did so at least on or about October 28, 2009 and March 9, 2010, giving written updates to William Tracey, then the Executive Director of the State Board.

7. Throughout this time period, the PCAOB's peer review of SWH remained open, awaiting a final report on the 2007 Inspection.

8. Due to the extended time period during which SWH's peer review remained open, both the State Board and I, on behalf of my clients, contacted the PCAOB numerous times in

attempts to determine the status, and ultimate disposition, of the 2007 Inspection and to obtain a final peer review report. These attempts, which included correspondence that I sent directly to George Diacont, Director of the PCAOB's Division of Registration and Inspections, were unsuccessful.

9. Consequently, despite the foregoing efforts to secure the final disposition of the PCAOB's peer review of SWH, the State Board closed its file on the Respondents on July 8, 2010 because of the failure of the PCAOB to issue a final peer review report. I understand that this closure by the State Board resulted entirely from the delay by the PCAOB in issuing a final peer review report and was in no way the fault or responsibility of the Respondents.

10. This closure by the State Board – again, due to no fault of either SWH or Mr. Hatfield – resulted in the administrative revocation of SWH's state accounting license. As I understand it, this administrative revocation was retroactively effective as of January 31, 2010, which I understand to have been the required license renewal date for SWH.

11. Throughout this protracted time period, SWH, in turn, was unable to renew its accounting license with the State Board due to the pendency of the incomplete PCAOB peer review. Accordingly, the failure of the PCAOB to timely complete its final peer review report, which both the State Board and Respondents were powerless to cure, prevented the firm and Mr. Hatfield from timely renewing SWH's accounting license.

12. It is important to note that the Respondents did not receive any notice of the State Board's administrative revocation at the time it occurred.

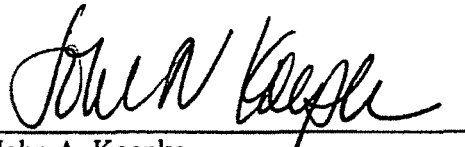
13. On September 22, 2010, the PCAOB finally issued additional comments to the 2007 Inspection. On October 29, 2010, the PCAOB issued final comments to the report on the 2007 Inspection (the "Final Report"). By this time, the State Board had already administratively revoked SWH's license due to the delinquency of the completion of the Final Report.

14. The Final Report was provided to the State Board on December 15, 2010.

15. As counsel to the Respondents, I believe that Mr. Hatfield did all that he could to obtain a final report on the 2007 Inspection and peer review of SWH. For reasons beyond his control and that remain unknown, the PCAOB did not issue a timely peer review report until well after the State Board had cause the administrative revocation of SWH's public accounting license. Unfortunately, Respondents were put in a untenable position because they could not timely renew the license with the State Board because they did not have a final peer review report from the PCAOB, which was a requirement of the State Board license renewal process.

I declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

Signed this 4 day of March, 2013.

  
\_\_\_\_\_  
John A. Koepke

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 67793**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3415**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15012**

**In the Matter of**

**Scott W. Hatfield, CPA; and**  
**S. W. Hatfield, CPA**

**Respondents.**

**DECLARATION OF DAVID R. KING**

I, David R. King, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the following is true and correct, and that I am competent to testify as to the matters stated herein:

1. I am over 21 years of age.
2. I am a Certified Public Accountant licensed in the State of Texas, a Certified Fraud Examiner, and a Certified Management Accountant. In 1982, I received a Bachelor of Science degree in Accounting from Louisiana State University in Baton Rouge, Louisiana.
3. Between 1982 and 2003, I was employed by international accounting firm Ernst & Young, LLP. During that time, I was responsible for planning, executing, and supervising audits of private and public company financial statements and for conducting fraud investigations and performing other litigation services.



4. Since 2003, I have been employed as a Staff Accountant by the Enforcement Division ("Division") of the United States Securities and Exchange Commission ("Commission") in the Fort Worth Regional Office. My official duties within the Division include participating in fact-finding inquiries and investigations to determine whether the federal securities laws have been violating and assisting in the Commission's litigation of securities laws violations. As part of my duties within the Division, I conduct investigations, analyze financial records, subpoena records, take sworn testimony, prepare reports summarizing my findings, and am available to testify about such things at hearings or in other legal proceedings.

5. I have personal knowledge of the facts and circumstances of the Division's investigation of Scott W. Hatfield ("Hatfield") and S.W.Hatfield CPA ("SWH"), as I personally conducted the investigation which led to the above-captioned administrative proceedings.

6. Respondents refused to participate or cooperate in the Division's underlying investigation. They repeatedly ignored voluntary requests and subpoenas for the production of documents. For instance, on March 28, 2012 I sent Respondents a litigation hold notification and voluntary request for documents including, but not limited to, communications with the Texas State Board of Public Accountancy ("TSBPA"). Respondents never provided responsive documents to the Division and I am unaware of whether they properly preserved and retained documents as instructed. See March 28, 2012 Letter, attached hereto as Exhibit A and incorporated herein.

7. In addition, on April 10, 2012, the Division subpoenaed Respondents to (a) produce the documents they previously failed to produce voluntarily; and (b) appear before the Division and give sworn testimony on April 24, 2012. See April 10, 2012 Subpoena to Respondents, attached hereto as Exhibit B and incorporated herein.

8. Respondents ignored the April 10, 2012 subpoena and failed to produce documents or appear for testimony. *See* Letter of April 24, 2012, attached hereto as Exhibit C and incorporated herein.

9. Despite Respondents refusal to cooperate with the Division during its investigation, I determined, by confirming directly with TSBPA staff, that SWH's firm license expired on January 31, 2010 and was not renewed until May 19, 2011.

10. A licensee who has failed to pay the annual fee is not in good standing in the State of Texas and is not permitted to hold itself out as a CPA until all fees are paid. *See* (a) TEXAS STATE BOARD REPORT, Texas State Board of Public Accountancy, November 2008, Volume 97 at p. 11; (b) TEXAS STATE BOARD REPORT, Texas State Board of Public Accountancy November 2009, Vol. 101 at pp. 1, 6-7; and (c) TEXAS STATE BOARD REPORT, Texas State Board of Public Accountancy, November 2012, Vol. 113 at p. 3, attached hereto, collectively, as Exhibit D and incorporated herein. The Texas State Board Report is an industry publication for accountants in the State of Texas distributed to TSBPA license holders.

11. In 2010 and 2011, Hatfield was SWH's sole proprietor. Together Respondents caused SWH to issue 38 audit reports for 21 public company issuers while SWH's firm license was expired. *See* SWH "Report[s] of Registered Independent Certified Public Accounting Firm," attached hereto, collectively, as Exhibit E and incorporated herein.

12. Each of those issuers included SWH's audit reports in registration statements and periodic reports they filed with the Commission. *See* Commission filings of SWH audit clients, attached hereto, collectively, as Exhibit F and incorporated herein.

13. I prepared an Appendix summarizing, in a single table, the issuer filings that included audit reports issued by Respondents while SWH's firm license was expired. *See* Appendix of

Filings Including Audit Reports Issued by S.W. Hatfield, CPA while License Expired January 31, 2010 to May 19, 2011, attached hereto as Exhibit G and incorporated herein.

14. SWH's annual reports filed with the PCAOB on Form 2 acknowledge that Respondents issued audit reports while SWH's firm license was expired. See SWH Form 2 for reporting periods April 1, 2009 – March 31, 2010 and April 1, 2010 – March 31, 2011, attached hereto, collectively, as Exhibit H and incorporated herein. Hatfield has not filed SWH's annual report for the reporting period April 1, 2011 to March 31, 2012, which was due by June 30, 2012. Consequently, SWH is in violation of Section 102(d) of the Sarbanes-Oxley Act of 2002 and PCAOB Rule 2200, *Annual Report*, which provides that "[e]ach registered public accounting firm must file with the Board an annual report on Form 2..." PCAOB Rule 2201, *Time for Filing Annual Report*, sets June 30 of each year as the filing deadline.

15. SWH's audit reports were included in the public filings of issuer clients who issued, offered, and sold securities while SWH's license was expired. During my investigative work, I performed online research on OTC Markets and Yahoo! Finance websites and personally determined that five of the 21 issuer clients for whom SWH issued audit reports while its license was expired were, at that time, quoted on the OTC Bulletin Board and/or Pink Sheets, as reflected in the following chart I prepared summarizing the number of days traded, the average trading volume and the low, high, and average close price per issuer during the relevant period:

Issuer	No. Days Traded	Avg. Daily Volume	Close Price		
			Low	High	Average
8888 Acquisition Corp. (EGHA); (Registration withdrawn Aug. 17, 2011)	13	261	\$ 0.07	\$ 3.00	\$ 1.11
Eight Dragons Co. (EDRG)	26	213	\$ 0.07	\$ 1.70	\$ 0.57

Issuer	No. Days Traded	Avg. Daily Volume	Close Price		
			Low	High	Average
HPC Acquisitions, Inc. (HPCQ)	23	8,665	\$ 0.01	\$ 0.75	\$ 0.15
Truewest Corp. (TRWS)	7	200	\$ 0.10	\$ 3.00	\$ 1.39
X-Change Corp. (XCHC)	128	9,268	\$ 0.20	\$ 1.58	\$ 0.47

16. I also personally determined, by reviewing the issuers' filings with the Commission, that another of the 21 issuer clients, SMSA Kerrville Acquisition Corp., issued securities while SWH's license was expired. Specifically, I know that on December 15, 2010, SMSA Kerrville issued 9.5 million shares of restricted, unregistered common stock in exchange for 100% of the outstanding common stock of another company. *See Exhibit F.*

17. I also personally determined, by reviewing the issuers' filings with the Commission, that four other issuer clients of SWH – Signet International Holdings, Inc., SMSA Crane Acquisition Corp., and SMSA Gainesville Acquisition Corp., and X-Change Corp. – issued securities while SWH's firm license was expired. *Id.*

18. Respondents charged \$187,222 as fees for audits conducted or completed while SWH's license was expired. *See Exhibits F and G.*

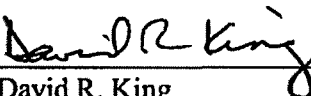
19. As part of my regular work for the Division of Enforcement, I calculate the amount of prejudgment interest the Division contends a Respondent is liable to pay on ill-gotten gains it obtained. The IRS underpayment of federal income tax rate as set forth in 26 U.S.C. § 6621(a)(2).

20. Based on a principal amount of \$187,222, application of the tax underpayment rate from May 19, 2011 through January 1, 2013 results in a total prejudgment interest amount of \$9,743.84. *See Division of Enforcement Prejudgment Interest Calculator Report, attached hereto as Exhibit I and incorporated herein.* May 19, 2011, the date on which Respondents renewed

SWH's license, is a reasonable estimate of the average date on which SWH collected amounts billed in connection with audit reports issued between January 31, 2010 and May 19, 2011. Accordingly I used May 19, 2011 as the date on which to begin accruing interest. Consistent with Commission policy, no interest accrues in the calendar month in which the disgorgement period begins and ends.

I declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 29th day of January 2013.

  
\_\_\_\_\_  
David R. King

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**

**Release No. 67793**

**ACCOUNTING AND AUDITING ENFORCEMENT**

**Release No. 3415**

**ADMINISTRATIVE PROCEEDING**

**File No. 3-15012**

**In the Matter of**

**Scott W. Hatfield, CPA; and**  
**S. W. Hatfield, CPA**

**Respondents.**

**DECLARATION OF WILLIAM TREACY**

I, William Treacy, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the following is true and correct, and that I am competent to testify as to the matters stated herein:

1. I am over 21 years of age. I am employed by the Texas State Board of Public Accountancy ("TSBPA") as Executive Director, a position I have held since September 1990.
2. As Executive Director for the TSPBA, I am responsible for, among other things, managing and overseeing the work carried on by the TSBPA's Enforcement Division and its staff, including enforcement attorney Virginia Moher, CPA.
3. Also, by reason of my position as Executive Director, I am authorized and qualified to serve as a custodian of records for the TSBPA, and I am familiar with the TSBPA's recordkeeping practices and systems. I certify that the documents attached hereto as Exhibits Treacy-A through Treacy-F are true copies of records that were (a) made at or near the time of the occurrence of the matters set forth therein, by, or from information transmitted by, a person with knowledge of those

**EXHIBIT**

**3**

matters; (b) made as part of a regularly conducted business activity as a regular practice; and (c) kept in the course of regularly conducted business activity.

4. I am familiar with the facts and circumstances surrounding the delinquency and expiration of S.W. Hatfield C.P.A.'s ("SWH") firm license between January 31, 2010 and May 19, 2011. The TSBPA investigation number concerning these matters is 08-03-10L.

5. In a letter dated October 9, 2009, the TSBPA notified Respondents that SWH's CPA license for 2010 had not been issued and that SWH had failed to report its peer review results for the years 2006 – 2009. *See Exhibit Treacy-A*, attached hereto and incorporated herein.

6. TEX. OCC. CODE § 901.404 requires the TSBPA to provide written notice to a license holder, no later than thirty days prior to the date on which a license is scheduled to expire, of the impending expiration. In accordance with the law, no later than December 31, 2009, the TSBPA sent written notification to Respondents' known address notifying them that SWH's firm license would expire on January 31, 2010.

7. I am aware that by no later than February 2010, TSBPA enforcement attorney Virginia Moher, CPA was in regular contact with John Koepke ("Koepke") regarding SHW's licensing issues. Koepke is a Jackson Walker L.L.P. attorney who, at that time, was engaged to represent Scott W. Hatfield, CPA in a Public Company Accounting Oversight Board ("PCAOB") investigation into SWH's accountancy practices. In fact, the TSBPA first contacted Koepke in the Spring of 2008 regarding the PCAOB investigation of SWH. Koepke first contacted the TSBPA on Respondents' behalf on May 14, 2008, to report his clients' efforts to address the PCAOB investigation.

8. I know that in or before March 2010, Virginia Moher again alerted Respondents, during a phone call with attorney Koepke, that SWH's firm license was expired, that it was three years delinquent in satisfying peer review requirements, and that Respondents could be sanctioned

for providing attest services without a valid firm license. *See* Exhibit Treacy-B, attached hereto and incorporated herein. Respondents' counsel claimed that that they did not provide attest services to non-issuer clients and, therefore, were exempt from peer review requirements. *Id.*

9. On or about March 8, 2010, the TSBPA's Licensing Division notified SWH affiliate Ronald Johnson by email that SWH's firm license was delinquent and expired. *See* Exhibit Treacy-C, attached hereto and incorporated herein.

10. On March 15, 2010, the TSBPA sent another letter to Koepke notifying Respondents that they were required to provide the TSBPA a PCAOB-authored letter stating that all issues arising from its September 28, 2005 inspection had been "satisfactorily addressed" by SWH. *See* Exhibit Treacy-D, attached hereto and incorporated herein.

11. Between 2008 and May 2011, Respondents' email address on file with the TSBPA was: [REDACTED]

[REDACTED] On July 8, 2010, the TSBPA sent another letter to Koepke advising him that SWH's firm license would be blocked and that it could not: (a) hold itself out as a CPA firm; or (b) perform audits or attestations because its firm license was delinquent and expired. *See* Exhibit Treacy-E, attached hereto and incorporated herein.

13. On May 25, 2011, the TSBPA permitted SWH to obtain a firm license after the firm paid the required fee and after determining that the PCAOB had not, at that time, issued final sanctions against SWH and that SWH did not service non-issuer clients requiring the firm to submit to peer review. *See* Exhibit Treacy-F, attached hereto and incorporated herein.

I declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct.

Executed this 28<sup>th</sup> day of January 2013.

  
William Treacy, Executive Director